



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Les White

SUBJECT: NEPOTISM POLICY

DATE: February 8, 2007

COUNCIL DISTRICT: N/A
SNI AREA: (If applicable)

RECOMMENDATION

Acceptance of the report on the City's Nepotism Policy.

OUTCOME

Provide the Mayor and the City Council with information and background on the rules and administrative policies related to nepotism.

EXECUTIVE SUMMARY

The City of San Jose expects the highest ethical standards of all of its employees and officials. Nepotism can create an opportunity for significant ethical issues such as favoritism, bias, and conflicts of interest, whether actual or perceived. In addition, nepotism in the workplace can also have detrimental effects on morale.

The City's current nepotism rules and policies address the ethical issues created by having relatives in the workplace. However, given that the City of San Jose is a large organization with approximately 6,700 employees, careful consideration was taken to ensure that the administrative policies were not overly restrictive. The current policy does not restrict relatives from working at the City, nor even in the same City department, but it does restrict relatives from working within the same chain of command. Allowing relatives to work within the same chain of command creates issues involving authority and/or influence that can lead to actual or perceived favoritism, bias and conflicts of interest.

The City's policy allows, whenever possible, for employees to be reassigned when necessary to avoid relatives from working in the same chain of command. Since the

implementation of the current policy, we have successfully reassigned employees to avoid circumstances where there were or would have been relatives in the same chain of command.

The current nepotism policy was developed concurrently with the policy related to consensual romantic relationships between employees. Many of the same issues and concerns related to actual or perceived favoritism, bias and conflicts of interest that arise out of nepotism in the workplace can also be created by consensual romantic relationships between supervisors and subordinates, even though the employees may not be related to each other. For this reason, the same restrictions regarding working within the same chain of command apply to these relationships and are contained within the City's Discrimination and Harassment Policy.

BACKGROUND

Several Councilmembers have asked for information regarding the City's rules and administrative policies related to nepotism. The purpose of this memorandum is to provide information and background on the City's rules and administrative policies related to nepotism, including the development and implementation of the policy.

The intent of a nepotism policy, in general, is to address ethical issues such as actual or perceived favoritism, bias, and conflicts of interest created resulting from employees hiring, appointing, and being in a position to affect the employment of their relatives. In researching and developing the City's nepotism policy, it became apparent that there were various options to consider in evaluating how restrictive our policy should be. After careful consideration, the administration implemented a policy which balanced the interest in minimizing actual or perceived favoritism and bias in the workplace, without being overly restrictive.

HISTORY

In 1996, the New Realities Task Force identified three areas of the Civil Service System needing reform: hiring, discipline, and modified duty placements of City employees. The Civil Service Reform Task Force was commissioned to develop specific recommendations in those areas. The Civil Service Reform Task Force developed a Hiring Pilot Project which was in place from 1998 to 2003.

On October 30, 1997, the Civil Service Reform Task Force recommended that the City strengthen Civil Service Rules regarding nepotism or supplement the rules with a City-wide policy. It was also recommended that the definition of relatives be clarified and that the City identify the types of working and hiring relationships that can create an appearance of a conflict of interest.

On July 19, 2001, the Santa Clara County Grand Jury issued a report that included a recommendation that the City adopt and enforce a non-fraternization policy.

On October 16, 2001, the Grand Jury's recommendation was discussed at a City Council meeting and the Council directed staff to develop a written policy on non-fraternization and nepotism.

Nepotism Rules Regarding Hiring and Appointment

Nepotism rules and policies can apply to the hiring and appointment of relatives, as well as restrictions regarding appropriate reporting relationships. At the time the Grand Jury made its recommendations in 2001, the City already had in place written prohibitions on the hiring and appointment of relatives.

Section 907 of the San Jose City Charter contains the following provision relating to nepotism:

The Council shall not appoint to a salaried position under the City government any person who, at the time of his appointment, is related by blood or marriage, within the second degree, to any member of such Council; nor shall the City Manager or any other appointing authority appoint to any salaried position under City government any person who, at the time of his appointment, is related by blood or marriage, within the second degree, to such appointing authority.

In addition, in 2001, the San Jose Municipal Code contained the following provision in Section 3.04.960:

The chief executive officer and/or department heads are prohibited against showing favoritism towards, or discrimination against, relatives as defined to be within the second degree.

In 2003, as part of the Civil Service Reforms, various revisions were made to the hiring process and policies. The language in the Civil Service Rules in the Municipal Code related to nepotism was strengthened as part of these revisions that were unanimously approved by the City Council. The revised language is contained in Section 3.04.950 of the Municipal Code:

No employee shall appoint, employ or participate in a hiring decision involving any person within his/her immediate family, nor use his/her position to influence another City employee to hire a member of his/her immediate family.

Rather than only applying to department heads, the new language under this section applies to any employee and addresses the problem of actual or perceived favoritism or bias in the hiring process by strictly prohibiting employees from participating in any way in hiring decisions of relatives.

As stated in the Hiring Policy contained in City Policy Manual Section 3.1.1, Department Directors have the duty to make final hiring decisions in his or her Department. In addition, under Municipal Code Section 2.04.040, Department Directors have the following duties:

Administration of the department and direction, control and supervision of all activities of all employees in the department.

A Department Director would not be able to have a relative work within his or her department not only because of their appointing authority, but also because they are ultimately responsible for all employees in their department, including decisions regarding issues such as promotions, pay increases, disciplinary actions, and performance appraisals.

Nepotism Policy Regarding Reporting Relationships

Prior to the adoption of written policies in 2005 regarding reporting relationships between relatives or between employees involved in a romantic relationship, the City Manager's Office discouraged City departments from having employees in such situations in the same chain of command. When such a relationship was present, efforts were made to transfer one of the employees out of the chain of command to avoid workplace problems.

Since reporting relationships are administrative decisions, the City Manager determined that rules relating to reporting relationships involving relatives were appropriately contained in an administrative policy as part of the City Policy Manual.¹ Staff worked with the City Attorney's Office in developing the current policy, and this included a review of articles regarding nepotism from legal journals and various public employment law firms. In addition, we reviewed information from International Public Management Association for Human Resources (IPMA-HR) and the International City/County Management Association (ICMA), as well as policies of other agencies.

The research included both policies related to nepotism and policies related to non-fraternization since both were being developed concurrently. (The non-fraternization policy is referred to as the policy on consensual romantic relationships.) While it was found that many agencies do not have formal written policies that apply to both of these issues, the County of Santa Clara did have a policy related to relationships between supervisors and subordinates. The County's policy specifically states the following:

[R]elationships within the "chain of command" are inappropriate since the subordinate does not have clear freedom of choice and therefore mutuality is undermined.

When developing the nepotism policy and the policy regarding consensual romantic relationships, many issues and options were considered. The goal was to develop policies that would effectively, reasonably, and legally address issues of actual or perceived bias, favoritism, conflicts of loyalty, impropriety, and conflicts of interest. In addition, a goal of the policies was to assist in ensuring effective supervision, internal discipline, security, safety and positive morale in the workplace.

¹ The development and implementation of administrative policies such as the Nepotism Policy are pursuant to the authority granted to the City Manager by City Charter Section 701.

In 2005, the City's Nepotism Policy, City Policy Manual Section 1.1.3, was established along with an amendment to the Harassment and Discrimination Policy, City Policy Manual Section 1.1.1, to address the issue of consensual romantic relationships.

ANALYSIS

Policy Options

In developing a nepotism policy, there are many options to consider that pertain to how restrictive the policy will be. The options below were considered in the development of the nepotism policy:

Option A: Complete restriction on relatives

This option completely avoids issues relating to actual or perceived favoritism and bias by restricting any relatives from working for the City. As a large employer, this option may be considered overly restrictive since employees could work in different departments thereby avoiding issues of favoritism and bias. In addition, legal issues may arise due to the overly restrictive nature of this option.

For example, if a relative of an employee who works in the Department of Transportation applies for a position within the Department of Planning, Building, and Code Enforcement, the applicant would be ineligible to be hired under this option. This was considered to be overly restrictive and subject to legal challenge.

Option B: Restriction on relatives working within the same City office or department.

This option avoids issues relating to actual or perceived favoritism and bias since employees who are related to each other would not be in the same department, thereby avoiding the possibility of one employee being in a position of authority or influence over the other. This option may also be considered too restrictive since the City has several large departments where the employees could be in different chains of command thereby avoiding issues of favoritism/bias.

Option C: Restriction on relatives where the City employees are within the same chain of command. (Current City Policy)

Option C avoids issues relating to actual or perceived favoritism and bias since employees who are related to each other would not be in the same chain of command, thereby avoiding the possibility of one employee being in a position of authority or influence over the other. This option is less restrictive than Option B in that it allows relatives to work in the same department, but not in the same chain of command where issues of authority or influence can lead to actual or perceived favoritism and bias. Option C also allows flexibility to keep employees within the same department, if feasible, by moving employees into different chains of command.

For example, a Division Manager of a City department may have one or more Senior Analysts that report directly to the Division Manager. In turn, a Senior Analyst may have one or more Analysts reporting directly to the Senior Analyst. Although the Analyst does not *directly* report to the Division Manager, the Division Manager has more authority than the Senior Analyst to affect the employment of the Analyst, such as in approving personnel actions that affect the Analyst. Under Option C, neither the Analyst nor the Senior Analysts could be related to the Division Manager since they are in the same chain of command. However, the Division Manager could be related to a Senior Analyst who worked in a different chain of command, even if *within the same City department*. Requiring that these employees be in a different chain of command avoids actual or perceived favoritism and bias, as well as avoids the difficulties arising from having an intervening supervisor responsible for supervising their superior's relative. This can lead to pressures and unequal treatment, even if unintentional.

Option D: Restriction on relatives only where one City employee directly supervises another City employee.

This option avoids issues relating to actual or perceived favoritism and bias but only in situations where the employees are in a direct supervisor/subordinate relationship. The difficulty with this option is that it does not avoid issues relating to actual or perceived favoritism where one employee does not directly supervise the other but is in the same chain of command. These situations can be more problematic than those in a direct supervisor/subordinate relationship since the higher level person may have more authority to affect the other's employment and also places intervening supervisors in the position of supervising their superior's relative. In addition, this option can create morale issues due to actual or perceived favoritism and bias by having relatives and persons in a relationship within the same chain of command.

Questions have recently arisen as to the reasons this option wasn't selected so that the policy only restricted employees from directly supervising a relative, rather than restricting relatives from being in the same chain of command. As described in the example cited under Option C, the issues of bias and favoritism are not alleviated by only addressing relatives in direct reporting relationships. In fact, more serious situations occur when intervening supervisors are placed in the situation of making employment decisions over a superior's relative. In addition, higher level supervisors are more likely to have the authority to make decisions that affect his or her relative's employment if the relative is in the same chain of command.

As an example, a Council Assistant normally does not directly report to a Councilmember, and the Chief of Staff may be the Council Assistant's direct supervisor. If Option D were the City's policy, the Council Assistant could be a relative of the Councilmember since the Councilmember would not be the direct

supervisor.² Although the Councilmember does not *directly* supervise their family member, the Councilmember could affect the family member's employment due to their higher level of decision making responsibility and authority. Additionally, pressure (whether intentional or not), is placed on the intermediate supervisor who is responsible for directly supervising the Councilmember's relative. For instance, the intermediate supervisor's decision as to whether or not to discipline his/her superior's family member or the type of rating the employee would receive on a performance appraisal may be influenced (even if unintentionally) by the fact that the employee is related to his/her superior. The City's current policy avoids this situation by not allowing for relatives to be in the same chain of command.

Option E: No restrictions on relatives.

Option E is the least restrictive and does not avoid issues relating to actual or perceived favoritism and bias. It can create morale issues due to actual or perceived favoritism and bias by having employees who are related to each other or in a relationship supervise the other or be in the same chain of command.

Policy Implementation

After careful consideration, the City implemented a policy that most effectively and reasonably addressed reporting relationships involving relatives in the workplace. Option C, which only prohibits relatives from working within the same chain of command, was implemented for the following reasons:

- It avoids the ethical and legal issues (favoritism, bias, conflicts of interest, etc.) created by allowing relatives to work in the same chain of command.
- It does not completely prohibit relatives from working within the same department.
- It provides options for moving employees out of the same chain of command if the need arises.
- It helps address morale and fairness issues in the workplace.

Once it was determined that only restricting relatives from working in the same chain of command was the preferred approach, a draft nepotism policy was then distributed to Senior Staff and the bargaining units for their review and comment. In 2005, the City Manager adopted and incorporated the administrative policy into the City Policy Manual, and it was distributed to all City employees.

² However, a Councilmember would be prohibited from appointing their relative as stated in City Charter Section 907 similar to the restrictions that apply to employees contained in Municipal Code Section 3.04.950.

The policy is considered to be one of the Key City Policies and a copy is provided to all new employees, along with other policies such as the Code of Ethics and the Discrimination and Harassment Policy. In addition, this policy, along with the other Key City Policies, is reviewed annually by all employees as part of the performance appraisal process.

Situations that may be in violation of the policy can be reported by anyone either to a Department Director, the City Manager's Office or the Fraud and Audit Hotline. Reports can be anonymous. Although anyone may report a policy violation, the responsibility of resolving situations that may be in conflict with the Nepotism Policy rests with the Department Director.

Shortly after the policy was implemented, I have been advised that several issues were raised regarding potential violations of the policy. Most of these issues were resolved fairly easily by moving employees to different chains of command. In one instance, concerns were raised by co-workers that a supervisor who indirectly supervised a relative was giving preferential treatment to the relative. Other staff members were concerned and had resulted in morale issues due to the perception of favoritism. In this situation, we were able to remove the supervisor from the same chain of command, while remaining within the same Department. The City's policy enabled the successful resolution of this situation.

Consensual Romantic Relationships

While having a nepotism policy is important, it is equally as important to establish a policy or guidelines on consensual romantic relationships as many of the same issues (favoritism, bias, conflicts of interest, etc.) arise where consensual romantic relationships exist between non-relatives within the same chain of command. Since many of the same issues may be created by both consensual romantic relationships and nepotism in the workplace, it is important to maintain consistency when dealing with issues in both of these areas. Not maintaining consistency could result in potential legal issues. For example, it is important to have similar restrictions between employees who are married and those who may be in a romantic relationship but are not married. Accordingly, similar guidelines with respect to addressing consensual romantic relationships within the same chain of command were incorporated into the City's Discrimination and Harassment Policy.

CONCLUSION

The City's rules and policies on nepotism are an important component of the City's focus on ethics and open government. The policies are reasonable, not overly restrictive, and most importantly, they serve as an excellent example of the City's commitment to establish policies that help avoid actual or perceived favoritism, bias and conflicts of interest.

PUBLIC OUTREACH/INTEREST

The purpose of this section is to describe discussions that have occurred with the public, stakeholders, community groups and/or other governmental agencies. Staff will be asked to use the following checklist to determine if items are to be considered items of "Significant

Public Interest”, thus requiring additional notification per the matrix below. Please note the outreach that was done.

- ☐ **Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
(Required: Website Posting)
- ☐ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

These modes of notification should only supplement outreach efforts undertaken or are planned to be undertake. Additional outreach should be noted as a result of the determination that the item was of “Significant Public Interest”.

Public Outreach does not apply to this item; however, this item will be placed on the February 27, 2007 Council Agenda.

COORDINATION

This memorandum was coordinated with the City Attorney’s Office, the Department of Human Resources and the Office of Employee Relations.

CEQA

Not a project



Les White
City Manager

For questions please contact me at 408-535-8111.